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Zoning Diagnostic Report

Prepared for:
City of Midland, Texas

Monday, October 21, 2013

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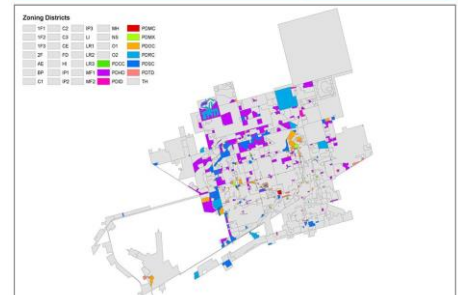
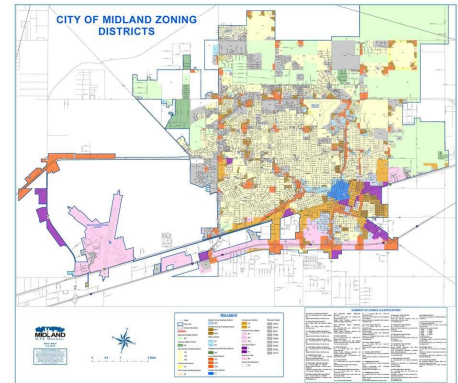


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INTRODUCTION

Background Information

The City of Midland has recently seen a significant amount of growth. Since the 2000 Census, the City has increased in population by 51,000 people (53.7% increase) to a 2013 population of 146,000 people. According to the U.S. Census and City Staff, Midland's population has grown by 35,000 people from 2010 to 2013. Growth related to the expansion of the energy industry is present throughout the region and is a significant growth factor. New development and redevelopment is expected to occur within Midland and this growth will be regulated by the City's Zoning Ordinance.

Midland Population Growth			
Year	Population	Population Change	Percent Change
2000*	94,996	-----	-----
2010*	111,174	16,178	17.0%
2013**	146,000	34,826	31.3%
* U.S. Census			
** Estimate from Midland Development Services Department			

Currently, the Zoning Ordinance is an older document and should be rewritten to accommodate contemporary development standards. This Zoning Diagnostic Report will review the current Zoning Ordinance and identify potential issues and recommendations to solve those issues. The Diagnostic Report is intended to provide City leaders and the public with the guidance needed to improve its zoning regulations.

Cities have three primary land use management tools, which are the **(1) Comprehensive Plan**, **(2) Zoning Ordinance**, and **(3) Subdivision Ordinance**. The City adopted a new Comprehensive Plan in 2005, which involved a broad base of community input and support. This plan will serve as one of the sources of input into the review of the Zoning Ordinance. While the current Zoning Ordinance ([Title XI, Chapter 1 of the Code of Ordinances](#)) has served the City, it has become evident that deficiencies exist and improvements should be made. The ordinance was originally adopted in 1963 and has been periodically updated over time. Therefore, in an effort to continue to provide for the public health, safety, and welfare, City leaders have charged City Staff to work with the consulting firm, Freese and Nichols, Inc., to lay the foundation for updating the current Zoning Ordinance and address immediate zoning issues with the development of this Zoning Diagnostic Report. Lastly, the Subdivision Ordinance ([Title XI, Chapter 2 of the Code of Ordinance](#)) is similar to the Zoning Ordinance, but is not as critically important as the Zoning Ordinance and is not included in the review of Zoning Ordinance.

Stakeholder Interviews on April 25, 2013

On Thursday, April 25, 2013, community stakeholders who have knowledge of and experience with the current Zoning Ordinance met to provide an understanding of what works well and what problems should be addressed within the Zoning Diagnostic Report. Community stakeholders included citizens, property owners, developers, City Staff, Planning & Zoning Commission members, and City Council members. The issues identified by these stakeholders have been incorporated into this report.



Figure 1: Downtown Midland

The 2005 Comprehensive Plan

In May 2005, the City adopted the 2005 Comprehensive Plan (also named the *Midland Master Plan 2025 - Remembering the Past, Planning for the Future*), which was the first major update since the adoption of the *Centennial Comprehensive Plan* in 1987. The 2005 Comprehensive Plan reflects the current community values in regards to zoning regulations. It recommends concepts for land uses, building designs, and neighborhood elements that can be transferred into the Zoning Ordinance.

Midland's Comprehensive Plans

1950 Comprehensive Plan
1970 Midland Plan
1987 Centennial Comprehensive Plan
2005 Comprehensive Plan (Midland Master Plan 2025)

General Concepts for Updating or Developing a New Zoning Ordinance

This Diagnostic Report has been drafted as the first step in the City's goal of updating or creating a new Zoning Ordinance. The following concepts have been considered in the drafting of this report.

Coordination between Regulations/Standards

Because a complete rewrite of the zoning regulations has not occurred in over a decade, there are many requirements that are in various locations. Requirements need to be provided in a single location, and if they cannot be (such as in an overlay district situation), adequate cross-referencing of where requirements are located is essential.

A User-Friendly Format

Developers, City Staff, consultants, and others who use the new Zoning Ordinance should be able to easily navigate the new document. The new Zoning Ordinance should be written in a format that promotes scanning over reading long passages of text.

The Incorporation of Innovative Planning Principles

The City seeks to incorporate the latest thinking in the art and science of city planning into its new Zoning Ordinance. The ultimate goal of the new Zoning Ordinance is to help make Midland a great community. Therefore, one of the central objectives of this work effort will be to improve the basic policies and rules that govern and manage land development activities in the community. The updates or new Zoning Ordinance should focus on outlining a user-friendly land development process that will result in a better-quality urbanized environment.

A Legally Sound and Fair Document

Finally, regulations must be a fair and highly defensible set of rules for the development of land in the community. Any new Zoning Ordinance should clearly reflect basic Constitutional principles, recent court rulings, and other applicable case law. It also must be framed in accordance with Texas statutory authority as it pertains to community planning and land development, with issues such as appeal processes and rezoning.

The Resulting City Council and Planning & Zoning Commission Directive

Following the review of this Diagnostic Report, the City leaders are encouraged to provide input on the recommendations contained herein. If the City Council, Planning & Zoning Commission, and City Staff agree with the recommendations presented in this report, Phase II of the work effort should commence, which is the actual drafting of the new Zoning Ordinance.

Once the City Council, Planning & Zoning Commission, and City Staff reach consensus on the issues within this Diagnostic Report, this document will be used as the basis for the City's directives as the new Zoning Ordinance is written. For each diagnostic observation made, there is a recommendation that outlines how the issue can effectively be addressed. These recommendations are intended to be broad at this point in the process, with the final recommendation being written into the new Zoning Ordinance.

Status of this Draft Report

This October 2013 Report is the third draft of the Diagnostic Report and is intended for review by the City Council and Planning & Zoning Commission at a joint workshop in **November 2013**. It is also intended that this draft be made available to the public (citizens, private developers, etc.) for review and comments. The public is encouraged to provide their input on any zoning issue and is asked to submit any comments to staff prior to the joint workshop in order for staff to compile and present the comments to the City Council and Planning & Zoning Commission.

The first draft was reviewed and revised by City Staff on June 13 and June 20. A second draft was created and then refined by City Staff in August and September to create this third draft, the October 2013 Draft. The purpose of the **February 25, 2014** joint workshop will be to gain the input and approval of both the Planning and Zoning Commission and City Council.

Notably, new issues may present themselves, as the ordinance rewrite is undertaken. It is the intent of this report to be a guide and starting point from which these issues and recommendations can be considered.

FORMATTING AND ORGANIZATION COMMENTS

1) Formatting and Style – “User-Friendly”

Diagnostic Observation

The typical user of the Zoning Ordinance desires to quickly find information to answer questions she or he may have. It is commonly accepted that a zoning ordinance in any community is scanned by readers and not intended to be read from cover to cover. Therefore, it is important to design a document that meets the “scan-ability” desire of its readers. With the current format, a person cannot quickly scan through the Zoning Ordinance, either visually or electronically, to find information due to a lack of subheadings, verbose/confusing wording, and organization format. Additionally, the current ordinance contains antiquated land uses and has an insufficient list of permitted uses.

Recommendation

The Zoning Ordinance should be in a readable, user-friendly format. The general format needs to be more like an outline with subheadings for each paragraph. The following steps should be taken in order to improve the Zoning Ordinance format and provide readers greater control over understanding the Zoning Ordinance:

- 1) An improved numbering system combined with an improved layout.
 - a. For example: Improved section/sublevel numbering, and master table of contents.
- 2) Incorporate the use of more subheadings to increase the ability to scan.
- 3) Where possible, paragraph text should be replaced with bullet points or illustrations.
- 4) Reduce the need for text explanations when charts, tables, or illustrations can be used.
- 5) Update and add land uses to address current development.

2) Organization – The Components of the Zoning Ordinance

Diagnostic Observation

The highlighted chapters within [Figure 2](#) are considered to be zoning related chapters. The current Zoning Ordinance is found in [Title XI, Chapter 1 of the Midland Code of Ordinances](#).

Additionally, Chapter 7a (Signs), Chapter 8 (Containers), Chapter 9 (Landscape Regulations), and Chapter 10 (Site Plan Review Standards) are contained in Title XI, but are separate from the Zoning Ordinance (Chapter 1). Also, Title V (Business Regulations) contains regulations governing mobile homes regulations within its Chapter 5. These chapters, with the exception of

MIDLAND CODE OF ORDINANCES (EXISTING)	
TITLE I - ADMINISTRATIVE	
TITLE II - COMMISSIONS AND BOARDS	
TITLE III - DEPARTMENTS	
TITLE IV - BUILDING REGULATIONS	
TITLE V - BUSINESS REGULATIONS	
	Chapter 5 - MOBILE HOMES AND VACATION TRAVEL TRAILERS
TITLE VI - POLICE REGULATIONS	
TITLE VII - FIRE REGULATIONS	
TITLE VIII - FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION	
TITLE IX - PUBLIC WAYS AND PROPERTY	
TITLE X - TRAFFIC REGULATIONS	
TITLE XI - PLANNING AND DEVELOPMENT	
	Chapter 1 - ZONING
	Chapter 2 - PLATS AND SUBDIVISIONS
	Chapter 3 - FLOOD HAZARD AREAS
	Chapter 4 - LAKE AREAS
	Chapter 5 - PROCEDURE FOR SECURING PERMISSION TO MAKE EXCAVATIONS AND FILLS
	Chapter 6 - WATER AND WASTEWATER MAIN LINE EXTENSIONS
	Chapter 7 - OUTDOOR SIGN REGULATIONS
	Chapter 7a. - REVISED OUTDOOR SIGN REGULATIONS
	Chapter 8 - FREIGHT AND PORTABLE STORAGE CONTAINERS
	Chapter 9 - LANDSCAPE REGULATIONS
	Chapter 10 - SITE PLAN REVIEW STANDARDS
	Chapter 11 - AIRPORT HEIGHT HAZARD AND LAND USE ZONING
TITLE XII - RESERVED	
TITLE XIII - AIRPORTS	

Figure 2: Layout of the Existing Zoning Regulations (highlighted chapters are chapters to be combined into the new Zoning Ordinance)

signs, are typically contained within a zoning ordinance and are not standalone chapters. Ideally, these chapters are nested in the Zoning Ordinance itself due to their direct relationship to zoning districts. Since these chapters are found throughout Title XI (Planning and Development) and Title V (Business Regulations), the roles of these chapters can often become confusing to understand. For example, a reader who has no idea that Chapters 9 and 10 are directly related to the Zoning Ordinance (Chapter 1) has no reason to see a connection between the chapters. Also, Title XI addresses the all the key development ordinances, such as the Zoning Ordinance (Chapter 1), Subdivision Ordinance (Chapter 2), and Sign Ordinance (Chapter 7). Due to their existing functions, Chapters 9 and 10 are not needed as standalone chapter but instead operate as subsections of Chapter 1 (Zoning).

Recommendation

It is recommended the highlighted chapters within [Figure 2](#) be combined in the new Zoning Ordinance. Ultimately, this effort will help to improve the flow of the document. These elements should be crafted into one, uniform document to allow a reader to understand the regulations. The following [Figure 3](#) depicts the organization of the new Zoning Ordinance.

Please note, when the sign regulations are incorporated into the zoning regulations, then the city may not be able to enforce any of the sign regulations within the ETJ, due to the fact that zoning applies only to land within the city limits.

Also (in regards to non-zoning related matters), it was discussed between City Staff and FNI that Chapters 3, 4, 5, and 6 of Title XI may be better suited in an engineering manual or document instead of being located in Title XI due to the relevance of these topics to “planning and development.” It is recommended the City have further internal City discussions to determine if this is appropriate.

MIDLAND ZONING ORDINANCE (PROPOSED FORMAT)

Section 1. General Provisions

- 1.01. Enacting Clause
- 1.02. Purpose
- 1.03. Zoning District Map Regulations and Management
- 1.04. Zoning District Boundaries
- 1.05. Compliance Required / Interpretation / Rules of Construction

Section 2. Zoning Districts

- 2.01. Zoning Districts Established
- 2.02. Equivalency Table (if necessary)
- 2.03. Residential Zoning Districts
- 2.04. Nonresidential Zoning Districts
- 2.05. Special Zoning Districts
- 2.06. Dimensional Standards Tables

Section 3. Land Uses

- 3.01. Uses Permitted by District
- 3.02. Classification of New and Unlisted Uses
- 3.03. Use Chart
- 3.04. Conditional Development Standards
- 3.05. Regulations of Specific Uses
- 1.06. Nonconforming Uses and Structures

Section 4. Site Development Requirements

- 4.01. Landscape Requirements
- 4.02. Tree Preservation Requirements
- 4.03. Screening Standards
- 4.04. Off-Street Parking and Loading Requirements
- 4.05. Lighting Standards
- 4.06. Accessory Structure Standards
- 4.07. Supplementary Regulations
- 4.08. Nonresidential Development Standards
- 4.09. Nonresidential Design Standards
- 4.10. Residential Cluster Development Option
- 4.11. Residential Development Standards
- 4.12. Outdoor Sign Regulations

Section 5. Development Review Bodies

- 5.01. Director of Development Services
- 5.02. Planning & Zoning Commission
- 5.03. City Council
- 5.04. Board of Adjustment

Section 6. Development Review Procedures

- 6.01. Zoning Upon Annexation
- 6.02. Zoning Text and Map Amendments
- 6.03. Platting Property Not Zoned
- 6.04. Creation of Building Site
- 6.05. Certificates of Occupancy and Compliance
- 6.06. Site Plan Requirements
- 6.07. PD Application and Review
- 6.08. Specific Use Permit (SUP)
- 6.09. Amortization of Nonconforming Uses
- 6.10. Complete Application Requirements

Section 7. Zoning Relief Procedures

- 7.01. Zoning Regulation Appeal
- 7.02. Zoning Variance
- 7.03. Zoning Special Exception
- 7.04. Zoning Vested Rights Petition

Section 8. Definitions

Figure 3: Layout of the new Zoning Ordinance

3) Simplified Ordinance and Efficient Review Times

Diagnostic Observation

During the interviews, it was mentioned by several individuals that the organization of the document is undesirable and it is difficult to find information. The frustration most users feel is due to the age of the Zoning Ordinance, which was adopted in 1963. It has been amended over the years but has not seen a complete revision of the ordinance. The fact that the document is old and has been updated in piecemeal fashion over the years has led to the ordinance being difficult to understand. Advances in word processing and the ability to produce electronic documents have improved the formatting and style of these ordinances. This ordinance update is an opportunity to take a fresh look at the ordinance and find opportunities for simplification, such as graphics. Additionally, this update will look for possibilities to improve review times for applications.

Recommendation

Because of the ordinance age, it has become difficult for developers, citizens, and City Staff to understand and follow. Throughout the update of the Zoning Ordinance, opportunities will be taken to simplify the ordinance (through rewording, substituting wording for graphics/tables, etc.). Additionally, prospects to improve the review time of application will be sought.

GENERAL PROVISIONS

4) Maintenance and Zoning Map Updates

Diagnostic Observation

[Section 11-1-3](#) addresses the creation and maintenance of the Zoning Map. With advancements in mapping technology and lowered cost to purchase such technology, cities are updating these sections to take advantage of how computers and printers can better manage the creation and maintenance of zoning maps. The speed and ease of creating and updating maps with today's technology versus the older system of updating maps by hand has created a need for cities to rethink the best way to manage their zoning maps.

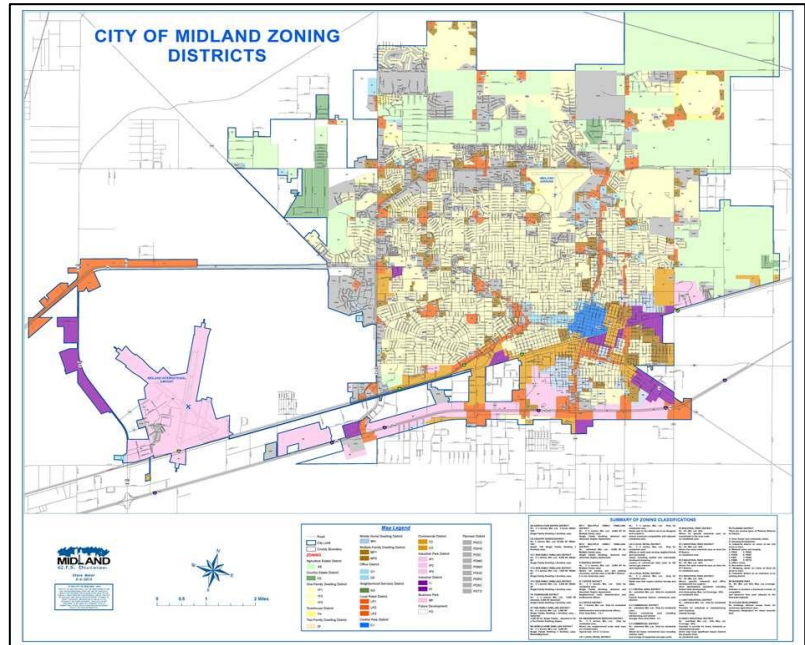


Figure 4: Existing Zoning Map

For instance, over the last few decades cities have amended zoning maps by making marginal notations or other similar markings for a zoning change/SUP. Now, zoning maps can be digitally edited and reprinted shortly after the Council approves a change. Midland's current ordinance is somewhat vague regarding how soon after City Council action the map should reflect the change.

Recommendation

It is recommended the City take advantage of current mapping software to manage the Zoning Map. The City should maintain an electronic file and hard-copy file of the Zoning Map in the Planning Division office. Regarding maintenance, the Planning Division Manager should be designated in the ordinance text as being responsible for the care and maintenance of the map. Additionally, the ordinance should state the following, "Any changes or amendments made to the zoning district or zoning district boundaries shall be incorporated into the Zoning District Digital Map file promptly after the amendment has been approved by the City Council."

After changes have been made to the Zoning Map, an online version should be promptly made available through the City's website reflecting the changes. The Planning Division Manager should periodically update and maintain the hard-copy of the zoning map at his or her discretion and keep it viewable in the Planning Division.

5) Zoning District Boundaries and Interpretation

Diagnostic Observation

[Section 11-1-15](#) of the current Zoning Ordinance addresses district boundary lines shown and how these lines shall be interpreted. While not very common, interpretation issues can arise when using the zoning map. The current section states that, “when the location of a district boundary line is not otherwise determined, it shall be determined by measurement using the scale of the map.” This method can be problematic due to mapping and that zoning layers may not match the lots that were zoned, often small slivers of zoning districts can overlap onto a property.

Recommendation

It is recommended that the City keep its basic rules for determining boundary lines, such as “boundary lines shown on the zoning district map are along streets, alleys, property lines or extensions thereof.” However, the City should add rules for interpretation when uncertainty exists, such as “boundaries indicated as approximately following the center lines of streets or highways, shall be construed to follow such center lines”.

ZONING DISTRICTS

6) Single-Family Zoning Districts

Diagnostic Observation

[Section 11-1-6](#) of the Zoning Ordinance details the zoning district classifications, uses, and specific regulations. During the interviews, it was mentioned that the three primary single-family or one-family districts (1F-1, 1F-2, and 1F-3) have served the City well. The AE, Agriculture Estate District and CE, Country Estate District also serve the single-family needs of the community. Interviewees commented that the City should consider reducing the setback for these districts. The current standards setbacks range between 20' to 25' in the 1F districts.

Single-Family Lot Sizes By Zoning District		
Single-Family Zoning District	Minimum Lot Size Required (Square Feet)	Difference in Lot Size (Square Footage)
Agricultural Estate (AE)	87,120	-----
Country Estate (CE)	40,000	47,120
One-Family – 1 (1F-1)	9,000	31,000
One-Family – 2 (1F-2)	7,000	2,000
One-Family – 3 (1F-3)	5,500	1,500

Additionally, the Comprehensive Plan calls for the creation of a new single-family district (see Page 6-19). It recommends the adoption of a one-acre district (approx. 40,000 sq.ft.) and a half-acre district (approx. 20,000 sq.ft.). The CE district already addresses the 40,000 sq.ft. recommendation. However, there is currently no district that addresses the 20,000 sq.ft. recommendation.

Recommendation

It is recommended (based on the Comprehensive Plan) that a new zoning district for single-family homes be created with a 20,000 sq.ft. minimum lot size. This district should be called Country Estate - 20 (CE-20), to indicate the 20,000 sq.ft. minimum lot size. As a result of adding the CE-20 district, the name of the current CE district should be updated to the CE-40 for consistency and to avoid any confusion.

Additionally, it is recommended that setbacks be reviewed for reductions. However, if setbacks are reduced for the main structure, a separate garage setback should be created. The purpose of a garage setback would be to avoid vehicles parking in front of the garage and overhanging into the sidewalk or street.

7) Multifamily (MF) Zoning Districts

Diagnostic Observation

A common complaint heard during the interviews was the fact that multifamily developments are limited to 16 DUA maximum. In the MF-1, district the maximum is 16 DUA; in the MF-2 district, developments can be greater than 16 DUA, but have to be approved by the Council by the SUP or PD process. Notably, the City has been using the PD process rather than the SUP for approving MF developments greater than 16 DUA.

The density of the MF district according to the Comprehensive Plan starts at 16 DUA as the minimum. Furthermore, the plan establishes the following basic criteria for multifamily development.

- The proposed multifamily tract should be adjacent to a major collector or arterial roadway;
- All structures within the multifamily development should be constructed with at least 75 percent masonry exterior;
- If the multifamily tract is adjacent to single-family residential dwellings, transition areas should be incorporated into the project; and
- Based upon the density of the complex, a minimum amount of usable open space should be required.

Additionally, the design and number of parking spaces required are important considerations for apartment developments. For example, enclosed parking spaces (i.e., garages) could be required for new apartment developments.

Recommendation

It is recommended that three different options be considered. First, increase the MF-1 district maximum to 20 DUA and increase the MF-2 to 30 DUA. The City should keep the SUP requirement if either a MF-1 or MF-2 development is proposed to be above the allowed DUA. This allowance is intended to provide flexibility in the downtown area, where denser apartment living would be appropriate. The second option involves creating a third multifamily zoning district (e.g., MF-3 district) to accommodate development greater than 16 DUA. In this option, the MF-1 and MF-2 densities could remain the same or increase slightly. The third option is to provide for density incentives to allow development to exceed the allowed number of DUA in exchange for items the city determines would benefit the community, such as affordable units. In addressing the lack of affordable housing, increasing density should help to increase housing supply.

As density is increased, the height limits and setbacks should be increased accordingly. A residential proximity slope (see [Figure 5](#)) should be considered as an option to ensure that the negative effects of taller MF developments are properly mitigated. It is important that the MF standards be designed to allow developers to build to these standards without having to apply for a Planned Development (PD) zoning district.

Additionally, it is recommended that the SUP requirement for MF developments greater than 16 DUA, which is located in Section 11-1-10-B-(36), be deleted since the Council is using the PD process instead.

Lastly, parking standards for apartments will be reviewed and updated as needed.

8) Planned Development (PD) Zoning Districts

Diagnostic Observation

The topic of PD zoning districts was frequently mentioned during the interview process. Overall, there appears to be an abundance of PD zoning districts, which is a sign that the current standards in the regular zoning districts are not properly addressing the community's development needs. [Section 11-1-9](#) addresses PD regulations and is a short section that does not provide enough guidance for the PD process. Subsection A establishes the types of PDs created, but there is no minimum size standards (e.g., two acre minimum) for the creation of a PD, except for a three (3) acre requirement for shopping centers. Additionally, a site plan is required for the PD at the time of the district's creation. Below are the general comments received during the interviews.

1. There are too many PDs in the City – Fix the PD standards.
2. The PD process is time consuming.
3. Have City Staff approve minor changes.
4. Many interviewees state that they did not like the PD process.
5. Must Fix Items: Hotels and apartments are the two most consistent types of development that require PDs.

Recommendation

It is recommended that the PD process be entirely rewritten and organized differently. PD should be in two sections of the Zoning Ordinance. The first section should be found within the section establishing all the other zoning districts. In this section, the land area requirement, base zoning district requirement, and similar standards will be prescribed. The second PD section will address the PD process and will be found in the procedures section. Most notably, a change should be made from requiring a PD site plan to requiring a "PD Concept Design Map" (similar to a concept plan) and "PD Design Statement." These two elements (i.e., PD Concept Design Map and PD Design Statement) should provide the Council with all the information needed to make an informed decision to establish a PD zoning district. A site plan for a PD should only be required at the time of building permit application.

9) LR Zoning District Updates

Diagnostic Observation

There were several comments and observations regarding the LR districts. The 2.5 story height maximum may be too low for some of the permitted uses. Additionally, the height standards in the LR-2 are the same as LR-3, LR-1, and NS districts. Additionally, there are performance standards for outside display and multifamily standards that are duplicated in every district.

Recommendation

It is recommended that the maximum height issue be investigated and possibly adjusted. A residential proximity slope (see [Figure 5](#)) can be added to ensure that effects on residential property are properly mitigated. Height regulations for architectural projections (from buildings) will be reviewed to determine if any actions are needed. Also, if the majority of the standards between the districts are similar, an opportunity to combine districts can be evaluated during the creation of the new ordinance. Finally, the performance standards and multifamily standards should be moved to appropriate locations within the document. Notably, the multifamily standards would be best addressed by showing the uses permitted in the use chart with conditional standards.

10) TH Zoning District Updates

Diagnostic Observation

There is a demand for townhomes in Midland. During the interview, many developers have recommendations for modifications to the district's standards. The developers expressed a desire to have a district that allowed for townhouse construction without having to come to the Council for a PD. The two most common comments were regarding (1) lot width and (2) minimum lot area. Ideally, developers felt lot width for one-story townhomes should be between 30'-40' and a two-story should be 40'. Additionally, the TH district is currently arranged like the other zoning districts, which are cumulative in nature. Therefore, everything in the 1F districts can be allowed in the TH district.

Recommendation

It is recommended that the TH district not be a cumulative zoning district to promote the need for this district. The lot width can be reduced from the current 32' to 30'. However, consideration should be given to whether the minimum lot size should be reduced from 3,500 sq.ft. The minimum 20' setback should be increased to 25' for front entry products (i.e., homes with driveways in the front yard) to provide space for vehicles to park in front of a building and not overhang into the sidewalk. Rear entry products (homes with alley access) can be reduced to 15' setback. The Comprehensive Plan calls for the density of TH development to be between 8-12 DUA, and the current TH district produces this range with the 3,500 sq.ft. minimum lot size.

11) Dimensional Standards for all Zoning Districts

Diagnostic Observation

The dimensional standards in the current ordinance are scattered in different sections and very confusing. Comments were given that lot widths and the required minimum square footage are competing issues. Additionally, lot coverage was an issue for the zoning districts. Ultimately, it was the desire of interviewees to have a system that they could easily understand and compare the requirements within the separate zoning districts.

Recommendation

It is recommended that all dimensional standards be grouped in either one or two tables (possibly a residential districts table and nonresidential districts table). This will allow for a better understanding of the current regulations and if updates are needed. A critical component of the new Zoning Ordinance will be improved readability of the document in order to better communicate the zoning standards. Additionally, a percentage lot coverage will be created to replace regulating coverage solely by setbacks, and standards for accessory building standards will be reviewed.

12) Remove the Parking "P" District

Diagnostic Observation

It appears that the P district is currently not in use. The district allows uses from the 2F district and allows for off-street parking as a use. This district is not shown on the zoning map and the standards contained within the section are minimal.

Recommendation

It is recommended the City consider deleting this district and moving the district's "off-street parking, access, screening and development regulations" to the parking section. Additionally, a district should be identified to allow "paid parking" as a standalone use.

13) Explore Height Restrictions within Nonresidential Zoning Districts

Diagnostic Observation

During the development of this diagnostic report, the relationship between nonresidential buildings and residential neighborhoods was discussed (including the height of accessory buildings). The primary issue was how the height of nonresidential buildings could affect the use and feel of residential neighborhoods. A secondary issue was how two-story accessory buildings should be set back to address privacy concerns. A static number to regulate the height of a building may not be the most appropriate type of regulation to mitigate the influence of taller buildings.

Recommendation

The concept of a residential proximity slope (RPS) should be investigated. The following are two examples of an RPS. These two examples show a residential use (either single family or multiple family) and an RPS continuing for an infinite or finite distance. The examples are for illustrative purposes only and depict two different methods of implementing the RPS concept.

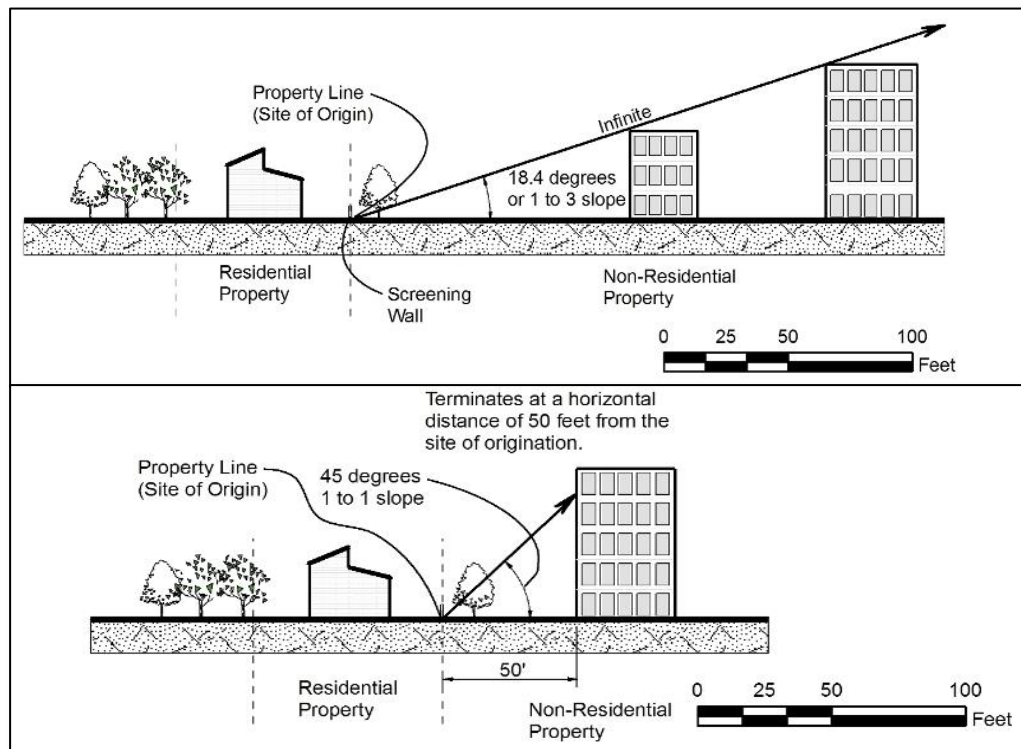


Figure 5: Residential Proximity Slope Examples (Visual is for Illustrative Purposes Only)

14) Evaluate Setbacks

Diagnostic Observation

The setbacks within the current Zoning Ordinance are comparable to cities across Texas. However, it was expressed in the interviews that the setbacks should be reviewed. Given the purpose and intent of the applicable zoning district, reductions in the setbacks could be considered. The Comprehensive Plan (see page 8-17) recommended the following setback standards.

1. Non-residential structures located along major streets should observe a minimum front building setback of 30 feet. A larger setback may be warranted for buildings exceeding 20 feet in height.
2. When a non-residential zoning district adjoins a residential district, the non-residential district should observe at least a 20-foot building setback. This building setback distance should be increased 1.5' or 2' for each one foot that the building exceeds 20 feet in height.

Recommendation

It is recommended that all setbacks be reviewed once all the standards have been complied into a dimensional table and purpose statements have been written for each districts.

15) Loop 250 Corridor Overlay Zoning District or Location Standards

Diagnostic Observation

The Comprehensive Plan recommended establishing a Loop 250 Corridor Overlay District to address major aspects of future nonresidential development along Loop 250 (and to reduce the use of Planned Development Districts). Specifically, it recommended standards for site and building design elements be created. Possible items to be reviewed included building setbacks and signage. The plan states that this would be an effective way to ensure quality future development while at the same time providing consistent standards for the development community and reducing the usage of PDs.

Recommendation

It is recommended that the overlay concept be investigated. However, the land along Loop 250 has a considerable amount of existing development. There is vacant land in the eastern part of Loop 250 and the southern part (north of IH-20). A possible alternative to the overlay would be to have design standards be location-based. (For example, a landscape buffer of 15' shall apply to properties adjacent to the right-of-way of Loop 250.)

16) Duplex (2-F District) Updates

Diagnostic Observation

The Comprehensive Plan recommended that the City incorporate the following criteria into its Zoning Ordinance in order to guide the location of the 2-F zoning district:

1. It should be used as a buffer between single-family development and an arterial roadway.
2. It should be used as a buffer between single-family development and higher intensity development, such as multiple-family or nonresidential development.

Recommendation

It is recommended that these statements be incorporated into the purpose statement of the district and should be added as standards to be considered during the rezoning process.

17) Downtown Midland

Diagnostic Observation

The Comprehensive Plan recommended establishing a Downtown Entertainment Overlay District (see Page 7-10) to streamline implementation of the Comprehensive Plan concepts proposed for the Downtown District (such as encouraging specific uses, mixed uses, cultural uses, and public uses). The 2007 Midland SMART Downtown Development Plan recommends locations for development and zoning recommendations. It recommends that the downtown be a place that offers alternatives to traditional detached single-family homes. These two documents and input from the Midland Downtown Director will be used in the update.

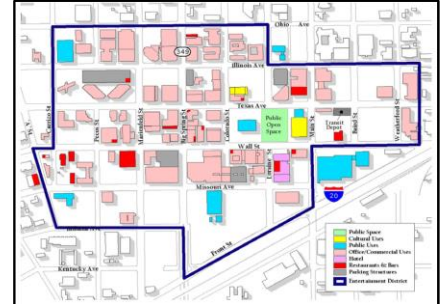


Figure 6: Map from the Comp Plan

Recommendation

It is recommended that this Comprehensive Plan and SMART Downtown Plan recommendations be evaluated to determine if the current circumstances warrant its creation. Most elements contained in this Comprehensive Plan and SMART Downtown Plan recommendations can be addressed in the C-1 zoning district. If it is determined later in the process of the ordinance rewrite that these element cannot be incorporated in the C-1 district, then the other zoning districts should be considered.

18) Purpose Statement for Each District

Diagnostic Observation

Except for the IH-20 Business Park District, all the current zoning districts lack purpose statements. These purpose statements serve a critical role in determining the nature of each district. Furthermore, the regulations for each district are directly related to the purpose statements.

Recommendation

It is recommended that purpose statements be created for all zoning districts.

19) Improve and Combine IP Districts

Diagnostic Observation

The current IP (Industrial Park) districts are formatted differently from all the other types of zoning districts. This can create confusion regarding the standards and how they should be applied. It is important that the Zoning Ordinance treat all districts the same in regards to organization in order to ensure that standards are being applied equally and can be identified.

Recommendation

The entire Zoning Ordinance format and organization will be improved, which will affect all zoning districts. The IP districts will be treated and arranged in the same manner as the other zoning districts.

Additionally, it is recommended that the City consider combining all the IP districts into a single IP district. Per discussion with City Staff, the concept of one IP district may be an improvement from having three separate districts. Notably, the IP uses are very similar in nature in all three districts.

LAND USES

20) Develop a Use Chart

Diagnostic Observation

The uses within the current Zoning Ordinance are laid out in a cumbersome fashion in [Section 11-1-6](#). This section details every use for each district in separate lists (or references another district's use list). This is an older way of displaying the allowed uses. Almost all new ordinances use a use chart to indicate allowed uses. The advantage of the use chart is that uses from across all zoning districts can be shown on one page. It also makes it easier to update the Zoning Ordinance if new uses are added because there is only one place for uses to be located. Furthermore, some land uses are antiquated and the current list of uses is insufficient to accommodate modern development.

Recommendation

The City should replace listing each zoning district's uses independently from each other and instead should adopt a use chart. Also, uses will be brought up-to-date and will be sufficient to cover the different types of modern development.

Uses		Residential		
Legend for Use Chart		SF-1, Single Family Residential (detached)	SF-2, Single Family Residential (detached)	SF-3, Single Family Residential (detached)
P	Use is permitted in district indicated			
	Use is prohibited in district indicated			
S	Use is permitted in district upon approval of a 2.10.09, Specific Use Permit			
#	Use is permitted (or permitted by SUP) if the use complies with conditional development standards or limitations in the corresponding numeric end note in 2.07.04, Conditional Development Standards			
\$	Reference to 2.09.03, Vehicle Parking Regulations			
Residential Uses				
Assisted Living/Nursing Home				
Carport		P	P	P
Dwelling, Single Family (detached)		P	P	P
Dwelling, Single Family (attached – duplex)				
Dwelling, Single Family (attached – townhouse)				
Dwelling, Multi-Family				
Guest House/Servants' Quarters		P-2	P-2	
Manufactured Home (HUD Code)				
Modular (Industrialized) Home		P-3	P-3	P-3

Figure 7: Use Chart Example

21) Reduce Cumulative Zoning and Cumulative Referencing

Diagnostic Observation

Almost all the current zoning districts are designed to be cumulative zoning districts, which can be problematic and difficult to know what uses actually apply to a district.

Cumulative zoning districts allow everything from the previous district (i.e., less intense district) plus new uses. For example, permitted uses in LR-3 district are the same as the LR-2 district, plus additional uses. For someone to know what the LR-2 uses are, the person must go to that section to see the uses; then when they read those standards, it states that the LR-2 uses are the same as the LR-1 district.

On the surface this does provide flexibility regarding land uses; however, it does not provide for a predictable land use pattern. Generally, zoning districts should allow property owners to be aware if a neighboring property is zoned to develop as single-family, duplexes, or apartments. Under the current system, the truly unknown nature of the MF-1 district would make rezoning properties to this designation difficult because property owners and neighboring property owners could assume the most negative impacts to their properties and protest any such zoning change.

Additionally, the cumulative nature of the current MF-1 district makes it difficult to prescribe the desired location and character of duplex and apartment developments because single-family uses could consume the MF-1 zoned land, leaving little or no available land for duplex and apartment developments.

Recommendation

It is recommended that all uses be moved to a "Use Chart" and be tailored for the purpose of that specific district. The districts can remain "semi" cumulative in nature due to the fact that more intense districts will typically encompass the uses from the less intense districts.

22) Affordable Housing

Diagnostic Observation

During the interviews, it was discussed that there is a lack of affordable housing within Midland. The concern is that many teachers, police officers, and other middle class individuals do not have housing options. Interviewees felt part of the cause was due to lack of density.

Recommendation

It is recommended that residential density be a focus of the new Zoning Ordinance. With the guidance from the Comprehensive Plan, opportunities should be reviewed to increase density to address affordable housing. Notably, increased density is often a divisive issue within communities. Therefore, density changes need to be mitigated with increased standards, such as buffering techniques and maximum height standards.

23) Conditional Use Standards (in Association with the Use Chart)

Diagnostic Observation

Many uses in the Zoning Ordinance need standards specific for those uses. Currently, those standards are scattered throughout the Zoning Ordinance. The standards for home occupations, manufactured homes, and multifamily standards are located in different places. There should be one location and a way for a reader to easily identify standards for specific uses.

Recommendation

It is recommended that a section for conditional use standards be created and hyperlinked to the use chart. This will allow for individuals to see where their use is allowed and the specific standards that may apply to their use. For example, "modular (industrialized) housing" should be a use and the associated standards for this housing type would be located in one section.

Additionally, it was noted that the text of the MF districts required multifamily developments to have an additional site plan approved by the P&Z and Council. This appears to be an additional step before the standard site plan required for the building permit. This process should be reviewed and streamlined in the conditional use standards section.

24) Nonconforming Uses, Structures, and Lots

Diagnostic Observation

[Section 11-1-11](#) addresses nonconforming uses (it currently does not address nonconforming buildings). A legal nonconforming use, structure, or lot (referred to as nonconformities) at one time conformed to the Zoning Ordinance, but since its adoption, the Zoning Ordinance has changed and the use, structure, or lot no longer complies with the City's zoning standards. The current section states that nonconformities "may be continued subject to such regulations as the board of adjustment may require for immediate preservation of the adjoining property."

In general, this section is vague regarding if the regulations apply to a nonconforming use, building, or lot. Notably, the BoA "may grant a change of occupancy from one nonconforming use to another, providing the use is within the same or higher classification as the original nonconforming use."

Recommendation

It is recommended that the BoA not be allowed to "grant a change of occupancy from one nonconforming use to another." It is also recommended that this section be reorganized into a more user-friendly style to eliminate the confusion regarding its requirements and to address structures. The entire section should follow a general outline as described below.

- 1) Establishment of Legal Nonconforming Status
- 2) Burden of Demonstration
- 3) Continuing Lawful Use of Property and Existence of Structures
- 4) Changing Uses and Nonconforming Rights
- 5) Expansion of Nonconforming Uses and Structures
- 6) Restoration of Nonconforming Structures
- 7) Movement of Nonconforming Structures
- 8) Completion of Structures
- 9) Reinstatement of Nonconforming Rights

25) Accessory Buildings used for Living Quarters

Diagnostic Observation

Currently, accessory buildings can be used for living quarters if a specific use permit (SUP) is obtained. The maximum floor area for an accessory building used for a living quarters is 35% or less of the main residence's floor area or 600 square feet, whichever is greater. The renting of the accessory living quarters is discouraged by limiting vehicle access and prohibiting doors to the accessory building from being placed adjacent to the street or alley (rather all access must be through the rear yard of the primary residence).

Recommendation

It is recommended that the standards for accessory buildings used for residential purposes be investigated, including limits for two-story accessory buildings. As the community is currently experiencing a housing shortage, accessory residential units could be beneficial to residents.

SITE DEVELOPMENT STANDARDS

26) Landscaping Regulations

Diagnostic Observation

Section 11-9 (Chapter 9) addresses the landscaping regulations. During the interview, it was discussed that major changes should be made to landscaping regulations and a complete rewrite of the section is needed. The landscaping regulations need to address the fact that Midland is located within a desert climate. Water resources are critical to all communities, especially West Texas communities. The following are comments received about the landscaping regulations.

- 1) Landscaping should be the right tree, right place.
- 2) Do away with the “pay a fee” instead of planting a tree requirement.
- 3) Need landscaping that is more water-friendly.
- 4) Current landscaping standards are for water-rich environments.
- 5) Ordinance needs to reflect that we live in a desert.
- 6) There are a lot of plants that grow well in this environment.
- 7) We are not McKinney, TX; we don’t need landscaping that makes us look like McKinney, TX.

Additionally, the Comprehensive Plan (on Page 8-17) provided the following landscape recommendation.

- 1) The City should require a portion of front yard areas of nonresidential developments to be landscaped.
- 2) The City should require landscaped areas within parking lots over a certain size (i.e. with a minimum number of spaces).
- 3) Street trees should be required at 30 feet on-center along the frontage of each of the thoroughfares.
- 4) The City should require that any tree removed to accommodate new development be replaced with two new trees. Credit toward the total amount of landscaping or number of trees required could be given to developments that preserve and protect existing trees.



Figure 8: Landscaping Example

Recommendations for the City’s landscape committee included providing areas for landscaping or permeable surfaces, allowing alternatives for tree planting (such as shade structures), and providing credits for existing trees.

Recommendation

It is recommended that the entire landscaping section be rewritten and focus on quality landscaping for desert environment. The “pay for alternative for landscaping” section should be deleted. Requirements will be revised to lower or eliminate the use of turf grass. Finally, alternative compliance options should be considered for inclusion into the ordinance.

27) Standards Contained in the Site Plan Review (Chapter 10)

Diagnostic Observation

[Section 11-10](#) (Chapter 10) addresses site plans. This section addresses more than just the typical procedures for approval. Chapter 10 contains standards for building elements (e.g., walls, etc.) exterior materials/colors, buffering, and lighting. Interviewees felt this chapter forces staff to make too many judgment calls. For example, the current text reads, “The use of a single color and use of dark or neon colors, except for accent, **should be avoided**.” It is very difficult for staff to enforce subjective wording.

Recommendation

These standards need to be reviewed, rewritten, and located in stand-alone section of the Zoning Ordinance (i.e., not contained in the site plan text). A critical part of the rewrite will be to avoid subjective language, such as “should be,” within regulations. Below is a summary of the recommendations:

- 1) Move site plans (Chapter 10) into the Zoning Ordinance (Chapter 1).
- 2) Update the building elements required.
- 3) Update the building materials required.
- 4) Screening and buffering should be in its own section.
- 5) Remove the words “should be” when referring to standards.

28) Parking Standards

Diagnostic Observation

The main issues with parking are the number of spaces required. During the interviews, it was discussed that the current parking standards are producing too many spaces. Notably, there is no parking required in the downtown area or IP zones.

Recommendation

It is recommended that all parking standards be reviewed and that the minimum number of spaces be required per business type.

29) Outside Storage

Diagnostic Observation

The current ordinance needs to address outside storage of materials. The Comprehensive Plan makes the following recommendations regarding outside storage.

- 1) Outside storage areas should not be permitted to face onto or be visible from any major thoroughfare.
- 2) If this is not possible, outside storage should be screened from public view.



Figure 9: Outside Storage Examples

- 3) The City should also specify that outside storage materials may not be stacked above the height of the screening wall.
- 4) The City should encourage existing businesses along major thoroughfares to relocate or screen outside storage areas.

Recommendation

The Comprehensive Plan recommendations should be incorporated into the new Zoning Ordinance. The LR-1 and LR-2 zones do not allow outside storage. The districts should be reviewed to determine if screening outside storage is appropriate in any of the districts.

30) Façade Materials and Façade Design

Diagnostic Observation

[Section 11-10-2](#) (Chapter 10) currently addresses building materials and façade design. The Comprehensive Plan makes the following recommendations.

- 1) A list of acceptable exterior materials to be used for buildings along the major thoroughfares should be established for visual cohesiveness.
- 2) Architectural variation should be required for facades of buildings larger than 50,000 square feet.

The City's Zoning Ordinance currently allows the following materials:

- 1) Architectural metal panels (i.e. metal composite materials and composite metal cladding);
- 2) Brick, natural stone, cast stone, rock, marble, granite, glass block or glass curtain walls, tile;
- 3) Stucco or plaster;
- 4) Synthetic stucco, i.e. Exterior Insulation Finish System (EIFS) or equivalent product;
- 5) Cellulose fiber-reinforced cement building board products, i.e. Hardie Board or equivalent product; or
- 6) Split-face concrete block, integrally-colored concrete block, poured-in-place concrete, and pre-cast concrete. (Concrete products shall have an integral color or a color coating or be textured); and
- 7) The use of metal for roofing.

Recommendation

It is recommended that the materials and façade requirements be reviewed. The standards should be moved from Chapter 10 into new sections. At this time, the standards should be reviewed and adjusted, if needed.

31) Screening Requirements

Diagnostic Observation

Screening devices should be designed to ensure quality development and that the screening devices will exist in a good condition. Currently, a screening wall or fence is required between apartment development and residential zoning districts. The regulations allow the required fence to be either of wood or masonry construction.

Recommendation

Wood screening fences should be prohibited due to maintenance issues. Screening should consist of several different options, such as a masonry wall with landscaping, living (evergreen vegetation) screen, or a combination living screen with tubular steel fencing. Ultimately, the purpose of the screening is to reduce the incompatibility issues between multifamily use and single-family neighbors. Therefore, it is in the community's best interest for screening to be designed to stand the test of time, which a typically wood fence does not.



Figure 10: Prohibit Wood Screening Fences and Masonry Walls without Landscaping as Screening Devices

REVIEW AND ADMINISTRATIVE PROCEDURES

32) General Procedures

Diagnostic Observation

Site plans, rezoning, appeals and other standard procedures are important to the development process. Citizens and developers consistently use these procedures. These procedures need to be clear and concise so every user can have an understanding of the often-complicated process. Additionally, the roles, responsibilities, variance criteria (i.e., how to apply criteria, how much flexibility for interpretation of criteria, etc.) and procedures of the Board of Adjustment (BoA) should be clarified.

Recommendation

It is recommended that all procedures be reviewed to better inform individuals of specific requirements. The use of visuals, such as flow charts, should be included in the Zoning Ordinance to clarify procedures. Efforts should be made to shorten the time it takes to complete different procedures. Additionally, coordination among departments is critical to establish the best format for review and approval procedures.

33) Zoning Upon Annexation – Automatic Zoning of FD

Diagnostic Observation

[Section 11-1-5](#) states that all newly annexed land shall be “classified” as the FD (Future Development) zoning district, until other zoning is established by the City Council. This automatic process of zoning should not occur. All zoning regulations must be enforced through a zoning district that has been formally adopted by the City Council through the regular zoning/rezoning procedures. The underlying reason is that all zoning must go through the approved public notification/review/input process and with automatic zoning this vital public element does not occur. Additionally, there is no statement saying that the zoning should be in compliance with the Comprehensive Plan and Future Land Use Plan for the City.

Recommendation

When new annexations occur, the zoning process should be used in conjunction with the annexation process. Notably, the FD district can still be used. Proceedings to establish zoning may be undertaken concurrently with annexation procedures (i.e., notified at the same time, public hearings scheduled at the same time as annexation, etc.). However, zoning approval and formal adoption of the ordinance establishing zoning must occur after approval of the Annexation Ordinance has occurred, and as a separate and distinct action by the City Council. Additionally, zoning newly annexed land should be in compliance with the Comprehensive Plan, where applicable.

34) Zoning Special Exceptions

Diagnostic Observation

The Board of Adjustment (BoA) is authorized to hear and decide a Special Exception to the Zoning Regulations. Special Exceptions may have potential adverse effects, but if controlled in the particular instance as to its relationship to the neighborhood and to the general welfare, may be permitted where specifically authorized in the Zoning Ordinance.

A Zoning Special Exception is an allowed type of deviation from the Zoning Ordinance, but is differentiated from a Zoning Variance by the following:

1. A Zoning Special Exception **does not require** a finding of an **undue hardship**; and
2. Approval of a Special Exception by the Board of Adjustment is specifically provided for and defined in the Zoning Ordinance.

The following items are identified as needing to be addressed:

1. **Amortization of a Nonconforming Use:** The BoA can amortize a use under special exceptions. Amortization should be its own section and should require Council approval.
2. **Sign Special Exception:** It is problematic to have a zoning special exception for the signs, because signs are not regulated by the Zoning Ordinance and are regulated by a different chapter of the code (Chapter 7).

Recommendation

It is recommended that the type of special exceptions that may be granted by the BoA be reviewed. Local Government Code 211 states the the City Council “may” authorize the BoA to hear special exceptions and that the Council may prescribe in detail the level of special exception to the BoA could grant.

It is recommended that amortization be a stand-alone section and not be a special exception.

If the Sign Ordinance (Chapter 7) is not moved into the zoning ordinance, then the sign special exception should be deleted and sign regulations should be completely contained in the Sign Ordinance (Chapter 7). Finally, it is recommended that the text of this section be updated to include that the BoA can impose conditions as part of the approval for special exceptions.

35) Zoning Variances

Diagnostic Observation

The Board of Adjustment (BoA) is authorized in specific cases to grant a Zoning Variance from the zoning regulation terms, standards, and criteria that pertain to an allowed use within a zoning district. A Zoning Variance is authorized when such cases are shown not to be contrary to the public interest if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in an undue hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

Hardships are often hard to define; therefore, standards for a hardship should be listed in any zoning section concerning variances.

Recommendation

It is recommended that the role of the BoA in the Zoning Ordinance be reviewed. The Council may want to change how the current BoA is governed. If this is the case, possible alternatives can be considered during the development of the Zoning Ordinance.

In order to grant a Zoning Variance, the variance section should be rewritten to include that the BoA must make findings that an undue hardship exists, using the following criteria:

- 1) That literal enforcement of the controls will create an undue hardship or practical difficulty in the development of the affected property; and
- 2) That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and
- 3) Financial hardship alone is not an “undue hardship” if the property can be used, meeting the requirements of the zoning district in which it is located.

36) Traffic Impact Analysis (TIA)

Diagnostic Observation

During the interview process, comments were made regarding the City’s standards for traffic impact analysis (TIA). It was mentioned that some hotels were asked to perform a TIA while some were not asked. It appears that the hotels that developed first were not asked because they were built in undeveloped areas, but when neighboring hotels were built, the TIAs were requested.

The TIA requirement to show traffic generated by a development applies only for SUPs. [Section 11-1-10-\(H\)](#), the Special Use Permit section, requires the following:

- “(H) Every application for a specific use permit of any type shall be accompanied by the following minimum information:
- (1) A detailed description of the intended use of the property.
 - (2) The availability and location of off-street parking.
 - (3) The projected amount of additional **traffic** generated in and around the property, the types of vehicles anticipated that will be visiting the property, the likely changes in **traffic** patterns, and the possible impact such changes in **traffic** will have on properties within 500 feet of the subject property.
 - (4) The proposed number of occupants or users of the property and the proposed hours of occupancy...”

Recommendation

The TIA should be applied equally to all development types requiring a Special Use Permit. This section should be reviewed and updated. The City should establish a threshold for triggering a TIA. Additionally, opportunities to apply the TIA requirement to development not involving a SUP should be considered.

37) Certificate of Occupancy and Compliance (COC)

Diagnostic Observation

Certificates of occupancy and compliance (COC) are addressed in [Section 11-1-13](#). This section states that “A certificate of occupancy and compliance **shall be applied for coincident with the application for a building permit** and will be issued within ten days after the completion of the erection, alteration or conversion of such building or land provided such construction or change has been made in complete conformity to the provisions of this Chapter.”

Recommendation

It is recommended that an inspection requirement be included in the above text. If the COC will be issued, it needs to be clarified that inspection is required.

38) Specific Use Permits (Alcohol Regulations)

Diagnostic Observation

[Section 11-1-10](#) establishes the standards for Specific Use Permits (SUPs). SUPs are tools within any zoning ordinance. The intent is to allow discretion in permitting a use based upon its compatibility within a specific area of a zoning district and surrounding uses. SUPs can be considered minor zoning cases and follow standard zoning change notification procedures. Since an SUP is a zoning change, the P&Z makes a recommendation to Council and the Council approve or denies the SUP cases.

The two most notable elements within this section are the “term” regulations and alcohol regulations. SUPs are divided in two categories “without term” and “with term.”

Recommendation

The following actions are recommended for this section:

- 1) Subsection (b) and (c) should be moved to the use chart. This is a long listing of uses that the new ordinance will replace with the use chart.
- 2) Review and consider maintaining the SUPs “without term” and “with term.”
- 3) **Alcohol regulations** are located in this section SUPs “with term.” These regulations most likely will remain in this format. However, discussions are ongoing with City Staff to determine if any changes are necessary to the current **alcohol regulations**, such as considering if on-premise consumption of alcohol in restaurants should be allowed by-right in any district where restaurants are allowed.
- 4) Consider removing subsection (D) which states, “A specific use permit without term shall be effective until repealed by the City Council.” It is recommended that a rezoning would have to take place to remove an SUP.

39) Zoning Text and Map Amendments

Diagnostic Observation

[Section 11-1-16](#) addresses changes, amendments, and fees. This section can be improved by providing clarity for the rezoning process. Additionally, no distinction is made between the requirement for a zoning text amendment and zoning map amendment.

A “Zoning Map Amendment” or “Rezoning” is a change or modification to the boundaries of any zoning district on the City’s Zoning Map. A “Zoning Text Amendment” is the change of the text within Zoning Ordinance, and does not include a change or modification to the boundaries of any zoning districts. A rezoning is the only amendment that needs mailed notification.

Recommendation

This section should be revised to clearly indicate the processes for both rezonings and zoning text changes. Furthermore this section should state that rezonings should be consistent with the Future Land Use Plan. Regarding the fee language, fees should reference a fee spreadsheet maintained separately from the Zoning Ordinance. The text regarding refunding fees should be deleted; this process can continue but shouldn’t be codified in this section.

40) Fee Ordinance

Diagnostic Observation

Fees are listed throughout the Zoning Ordinance. This practice is problematic because often ordinances are not updated to cover the increased cost of the staff reviews over the years. While a fee may have been adequate 10 or 20 years ago, the fee may not cover or substantially defer the cost of the review. A better method to charge fees is a fee ordinance that establishes the different fees for review. The fee ordinance allows fees to be more easily tracked and updated on an as-needed basis.

Recommendation

The City should remove fees from the Zoning Ordinance and adopt a fee ordinance.

41) Site Plan Review Process

Diagnostic Observation

The purpose of the site plan process is to establish a procedure for coordinating and verifying improvements to properties. Through site plan review, zoning standards and other applicable municipal standards or ordinances that may apply to specific site development can be uniformly implemented by the City for townhome, multifamily, and nonresidential development. This process is intended to promote, among other items, the efficient and harmonious use of land, safe and efficient vehicular and pedestrian circulation, parking and loading, lighting, screening, open space, landscaping, and natural features.

[Section 11-10](#) (Chapter 10) addresses site plans (please note this section addresses the site plan **process**; recommendations for the **standards** contained in the site plan chapter [Chapter 10] can be found on Page 24).

Developers mentioned that the process of having a project approved can be difficult. They mentioned each department looks at different items and their projects are individually rejected by each department, rather than being rejected just one time with all department comments. Developers mentioned they would like the reviews to be coordinated and Chapter 10 was a difficult chapter and an arduous process to navigate. Notably, site plans are approved by staff, except for site plans for multifamily development.

Recommendation

It is recommended that the site plan process be improved. There should be two types of site plans. This first type is site plans related to a rezoning request, which the P&Z and Council

review during the rezoning process. It is recommended that only site plans for multifamily development and SUPs need to submit these types of site plans. Second, the other type of site plan is a site plan related to a building permit. City Staff should approve these types of site plans during the building permit process.

The following standards should also be included in the updated section:

- 1) Criteria for Site Plan Approval;
- 2) Site Plan Expiration (Lapse); and
- 3) Site Plan Amendments (approving Substantially Conforming Site Plans).

42) Vested Rights and Permit Processing

Diagnostic Observation

State law has changed over the years to provide development projects that have started the development process under previously adopted ordinances to continue, even if new ordinances are passed by a city. Vesting laws establish the permits and project (i.e., a series of permits) to be valid for two to five years. A process of determining when permits and projects officially begin (i.e., accepted by a city as a fully completed application) should be clearly written in any ordinance. State law currently does not adequately define the process of vesting.

Recommendation

The new ordinance will have a process to:

1. Determine whether an existing project is vested;
2. Determine when an application is “complete” based on an objective checklist; and
3. Create criteria to ensure continuity for multi-phase developments, provided that development remains “active” and define “active”.

DEFINITIONS

43) Clarity and Expansion of Definitions

Diagnostic Observation

The definition section is key to having a successful zoning ordinance. If words and terms are clearly defined, then the implementation of zoning regulations is more easily managed. If definitions are too vague or terms are not defined at all, then the City Staff and users have greater difficulty in understanding the requirements of the Zoning Ordinance and whether the regulations apply in a given case.

Recommendation

The Zoning Ordinance should contain clear definitions for all regulated land uses, standards, and persons involved in the zoning process. All land uses, either permitted or specific use, should have a definition to clearly establish what type of uses are allowed in each zoning district. Additionally, standards should have definitions, such as definitions for masonry, official filing date, site plan, etc. Finally, all users of the Zoning Ordinance should be defined, such as applicant, person, development review committee, decision-maker, City Council, etc.

44) Regulations within Definitions

Diagnostic Observation

The ordinance generally does not contain regulations within its definitions, with the one minor exception of the home occupation definition. Zoning ordinances have regulations contained within the definitions; however, as a general rule, regulations should be in a separate section to reinforce the impartiality and objectiveness of the definitions themselves. The regulation of defined uses and structures is appropriate within other sections.

Recommendation

All definitions should stay within one section and should not be comingled with regulations. This section should have either its own article or section number with each definition having a sublevel section number to allow for easy cross-referencing and identification. Additionally, the definitions section may be divided into two parts to include (1) definitions for the use chart and (2) definitions for wording and interpretation of wording throughout the Zoning Ordinance.

45) Use State Definitions for State-Regulated Businesses

Diagnostic Issue/Observation

For uses regulated by the State of Texas, definitions should match definitions provided by the State of Texas. The State has developed specific definitions to classify and license businesses, such as day cares and childcare facilities.

Recommendation

It is recommended that the City use State definitions for businesses that typically require State licenses. For example, the childcare and group home definitions from Chapter 42 of the Texas Human Resource Code should be used to replace current definitions. Local regulations, such as hours of operation, should be located in other sections of the Zoning Ordinance. Additionally, definition wording should allow definitions to remain current with amended State laws.

46) City Manager Definition

Diagnostic Observation

The term “City Manager” is not defined in the definitions section. The underlying issue is how the term “City Manager” is applied and interpreted. For example, if the ordinance states the City Manager shall decide a certain type of application, then a strict interpretation would mean the actual City Manager should make the decisions and not a designee of the City Manager, such as the Chief Building Official or Director of Public Works.

Recommendation

The Zoning Ordinance should contain a definition for the City Manager (and for other staff positions, such as Planning and Zoning Manager). The definition should be written to be inclusive of the City Manager’s designee. This definition would provide the City Manager the flexibility to manage the ordinance through the delegation of responsibility and would keep the City Manager as the position of ultimate responsibility. The following is a recommended definition.

City Manager:

The officially appointed and authorized City Manager of the City of Midland, Texas, and may include the City Manager's duly authorized representative or designee, per the City Manager’s discretion.

47) Manufactured Home, Mobile Home, and Modular Home Definitions

Diagnostic Observation

The concept and definitions for manufactured, mobile, and modular homes are often confused. These terms are distinct and describe unique types of housing structures. Unfortunately, in the common usage of these terms in everyday language, the meaning of these terms are often comingled, which leads to greater confusion.



Figure 11: Manufactured Home

However, the State of Texas has established definitions for these terms in the development of the [Texas Manufactured Housing Standards Act \(Article 5221f and 5221f-1, V.A.C.S.\)](#) and the [Texas Occupations Code Chapter 1202. Industrialized Housing and Buildings](#).

Recommendation

While Zoning Ordinance section [11-1-17](#) currently has definitions for mobile home and manufactured home, it is recommended the Zoning Ordinance be updated to include the following revised definitions and new definitions.

Manufactured Housing:

Any one of three types of prefabricated housing products that are typically manufactured or assembled at a location other than the end user's permanent site, and that are regulated by the [Texas Manufactured Housing Standards Act \(Article 5221f and 5221f-1, V.A.C.S.\)](#) and the [Texas Occupations Code Chapter 1202. Industrialized Housing and Buildings](#). There are three types of manufactured homes:

a. Mobile Home

As governed by the definition within the [Texas Manufactured Housing Standards Act \(Article 5221f\)](#), a movable dwelling designed to be transported on its own chassis on the highway (either intact or in major sections) by a prime mover, which is constructed with a base section so as to be independently self-supporting, and which does not require a permanent foundation for year-round living. A mobile home is also defined as any manufactured home that was constructed prior to June 15, 1976.

b. Manufactured Home – HUD-Code (Displays Red Certification Label)

As governed by the definition within the [Texas Manufactured Housing Standards Act \(Article 5221f\)](#), a movable dwelling designed to be transported on the highway, either intact or in major sections, by a prime mover, which can be used as a residential dwelling either with or without a permanent foundation. A HUD-Code manufactured home is also defined as a movable manufactured home that was constructed after June 15, 1976. A HUD-Code manufactured home will display a red certification label on the exterior of each transportable section.

c. Modular (Industrialized) Home (also called Modular Prefabricated Structure) (Displays Blue Decal Issued by Tx. Dept. of Licensing and Regulation)

As governed by the definition within the [Texas Manufactured Housing Standards Act \(Article 5221f-1.\)](#), a structure or building module that is transportable in one or more sections on a temporary chassis or other conveyance device, and that is designed to be installed and used by a consumer as a permanent residence on a permanent foundation system. The term includes the plumbing, heating, air-conditioning and electrical systems contained in the structure. The term does not include a Mobile Home or Manufactured Home – [HUD-Code as defined in the Texas Manufactured Housing Standards Act \(Article 5221f, V.A.C.S.\)](#).

Synopsis of the Primary Differences between a Modular (Industrialized) Home and a Manufactured Home:¹

According to the [Texas Department of Licensing and Regulation](#) (TDLR), the primary differences between a modular (industrialized) home and a manufactured home are:

- The codes to which the homes are built. Modular housing in the State of Texas is constructed to the same codes as site-built housing. Manufactured housing is constructed to Federal HUD code standards;
- Modular homes must be installed on a permanent foundation system;
- Titles are not issued for modular homes. Once installed, the modular home becomes part of the real property; and
- A municipality may not differentiate between modular homes built under the Texas Industrialized Housing and Buildings (IHB) program and site-built homes.

¹ The following is an excerpt for the TDLR website: <http://www.license.state.tx.us/ihb/beforebuying.htm>

Regulations for Modular (Industrialized) Homes:

Per the [Texas Occupations Code §1202.253](#), a municipality may adopt regulations that require single-family or duplex modular (industrialized) housing to have or comply with the following elements.

a. Equal Value within 500 Feet

Industrialized housing shall have a value equal to or greater than the median taxable value for each single-family dwelling located within 500 feet of the lot on which the industrialized housing is proposed to be located, as determined by the most recent certified tax appraisal roll for each county in which the properties are located. ("Value" means the taxable value of the industrialized housing and the lot after installation of the housing.)

b. Compatible Design within 500 Feet

Industrialized housing shall have exterior siding, roofing, roofing pitch, foundation fascia, and fenestration compatible with the single-family dwellings located within 500 feet of the lot on which the industrialized housing is proposed to be located.

c. Comply with City Standards

Industrialized housing shall comply with municipal aesthetic standards, building setbacks, side and rear yard offsets, subdivision control, architectural landscaping, square footage, and other site requirements applicable to single-family dwellings.

d. Permanent Foundation

Industrialized housing shall be securely fixed to a permanent foundation.

Additionally, per [Texas Occupations Code §1202.253\(e\)](#), a municipality may not adopt a regulation that is more restrictive for industrialized housing than that required for a new single-family or duplex dwelling constructed on-site.

48) Home Occupation Definition

Diagnostic Observation

The home occupation definition contains regulations and needs to be revised. Regulation of home occupations is needed; however, the definition needs to be free from regulations. Regulations are appropriate as conditional use standards, which can be noted in a use chart.

Recommendation

It is recommended the definition read generally as follows: "Home Occupation" - An occupation, which is secondary to the primary use of a dwelling as a residence, conducted on residential premises by the occupant of the residence." The remaining standards should be moved from the definition (a hyperlink can be provided in the definition to the standards) to a conditional standards section.

SUBDIVISION ORDINANCE TOPICS

During the interviews for the Zoning Ordinance, other development-related topics that are not controlled by the Zoning Ordinance (such as block length, alley paving, etc.) were mentioned by interviewees. These commonly heard topics are listed below. While the Zoning Ordinance is not the correct tool to address these issues, the Subdivision Ordinance and other City ordinances should be reviewed and evaluated to determine if these other ordinances need to be updated.

49) Block Length

Diagnostic Observation

During the interviews, block length was mentioned as an issue. Specifically, the shorter blocks in the Stonebridge development were a preferred development type. The regulation of block length is a function of the Subdivision Ordinance and not the Zoning Ordinance. The Subdivision Ordinance section [11-2-5-\(B\)-5-\(a\)](#) states that the maximum block width depends on the minimum lot width required by the zoning district. As a result, block lengths range from a maximum 1,300 feet to 2,700 feet.

Recommendation

While block length is not a Zoning Ordinance regulation, it should be noted that if shorter blocks are desired then the Subdivision Ordinance should be updated accordingly.

50) Alley Requirements

Diagnostic Observation

During the interviews, a major point of discussion was the requirement for alleys and whether alleys should be required for new residential developments. Similar to the previous discussion of block length, the regulation of alleys is a function of the Subdivision Ordinance and not the Zoning Ordinance. The Subdivision Ordinance states the following:

“A block shall be so designed as to provide two tiers of lots served by an **alley**, except as permitted otherwise according to paragraph 3 (double frontage lots), above. Provided, however, that no **alleys** shall be required in the AE, Agriculture Estate District, or the CE, Country Estate District, zoning classification.” - [11-2-5-\(B\)-5-\(b\)](#)

“**Alleys** shall be provided in all use districts, except for the AE, Agriculture Estate District, and the CE, Country Estate District, and except that the commission, or the Council where its approval is required, may waive this requirement where other definite provision is made for service access.” - [11-2-5-\(C\)-3-\(s\)](#)

As the north and west parts of the City develop, interviewees felt density is going to be an issue. Some interviewees mentioned that they need to take out the alleys, since they have to buffer around existing well sites and in order to reach the density they need.

Also, interviewees suggested that if an alley is provided, then a reduction in the street width should be considered.

Recommendation

While the alley requirement is not a Zoning Ordinance regulation, it should be noted that if changes to the alley requirement are desired then the Subdivision Ordinance should be updated accordingly.

AIRPORT ZONING REGULATIONS (STAND-ALONE ORDINANCE)

It should be noted that the City has two separate and distinct zoning ordinances. The City has adopted both a Conventional Zoning Ordinance and an Airport Zoning Ordinance. These two ordinances have different enabling legislation and can be applied differently by cities (different approval bodies, etc.) and are not the same. It is important to understand the major differences between the two types of zoning. The following recommendations will go into further detail; however, the most fundamental differences are listed in the two paragraphs below.

Conventional zoning is established by [LGC Chapter 211](#) (Municipal Zoning Authority) and addresses standard zoning practices, such as districts, lot sizes, parking regulations, etc. Conventional zoning is the “zoning” most individuals understand and it applies to the entire City. Midland’s Conventional Zoning Ordinance is found in [Title XI, Chapter 1 \(Zoning\) of the Code of Ordinances](#).

Airport zoning is established by [LGC Chapter 241](#) (Municipal and County Zoning Authority Around Airports) and addresses (1) land uses permitted; (2) regulations for the type of structures; and (3) restrictions for the height of structures and objects of natural growth to prevent the creation of an obstruction to flight operations or air navigation ([LGC Sec. 241.011](#)) within defined airport hazard areas (e.g., the end of the runway and areas next to the airport with high noise levels). Airport zoning can be applied outside the city limits and can be jointly regulated and enforced with the County. Midland’s Airport Zoning Ordinance is found in [Title XI, Chapter 11 \(Airport Height Hazard and Land Use Zoning\) of the Code of Ordinances](#). The Airport Zoning Ordinance was adopted in 2007.

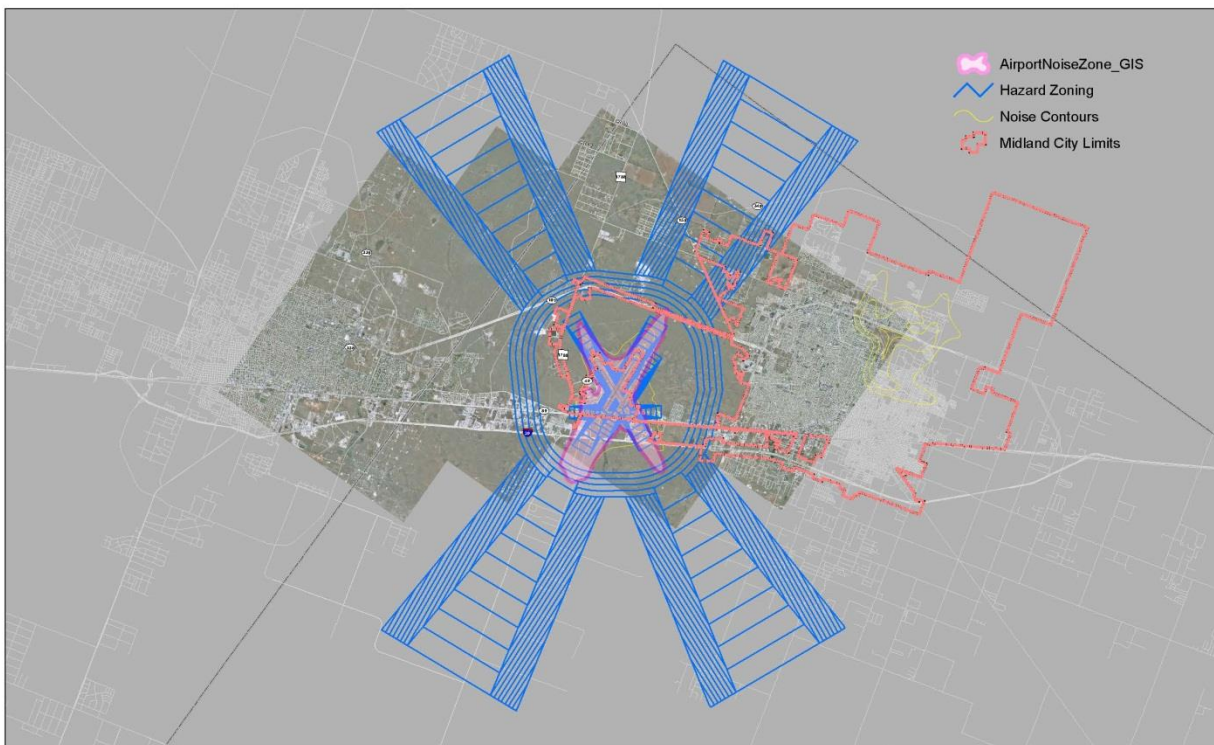


Figure 12: Example of the Midland International Airport Approach (Hazard) Zones

51) Maintain Separate Airport Zoning and Conventional Zoning Ordinances

Diagnostic Observation

The general purpose of airport zoning is to: (1) specify the land uses permitted; (2) regulate the type of structures; and (3) restrict the height of structures and objects of natural growth to prevent the creation of an obstruction to flight operations or air navigation ([LGC Sec. 241.011](#)). All these purposes can be addressed through either airport zoning or conventional zoning regulations. Also, the intent of both airport zoning and conventional zoning is to protect the public health, safety, and welfare. Notably, the intent of airport zoning is to regulate airport hazards that endanger the lives and property of users of the airport and of occupants of land in the vicinity of the airport.

Where airport zoning regulations differ from conventional zoning is that (1) airport regulations are tailored to the operations of an airport and (2) the State of Texas gives special provisions to airport zoning not found in conventional zoning. For example, [LGC 241.035](#) allows a city to require a building permit that the owner of a structure allows the city, at the city's own expense, to install, operate, and maintain on the structure or object of natural growth any markers and lights necessary to indicate to flyers the presence of an airport hazard. Additionally, Joint Airport Zoning Boards (JAZBs) may be established between political subdivisions (e.g., city and county) to enforce airport zoning regulations and are not limited to within city limit boundaries. The City, with a separate ordinance adopted in compliance with [LGC Chapter 241.013](#), can apply its current airport zoning regulations beyond its city limits if it is within an "airport hazard area."



Figure 13: Midland International Airport (MAF)

Recommendation

In order to efficiently and effectively regulate land surrounding Midland's airports (i.e., Midland International Airport [MAF] and Midland Air Park [MDD]), the City should maintain airport zoning regulations (Chapter 11) and conventional zoning regulations (Chapter 1) as two separate and distinct ordinances and chapters within the Code of Ordinances. While the Local Government Code (under [Section 241.015](#)) provides the option to incorporate airport zoning regulations into a Conventional Zoning Ordinance, it is somewhat vague if airport zoning would be limited to only land within the city limits. Since conventional zoning regulations (under [LGC Chapter 211](#)) can only be applied within the city limits, then incorporating the airport zoning into the Conventional Zoning Ordinance may limit the City's ability to apply its airport zoning regulation outside the city limits. If the airport zoning regulations are clearly tied to [LGC Chapter 241](#), then there will be no issue about the City's ability to apply its airport zoning regulations outside of the city limits.

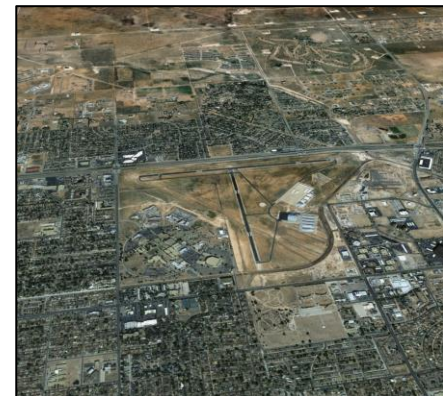


Figure 14: Midland Airpark (MDD)

52) Statement Regarding Airport's "Essential Community Purpose"

Diagnostic Observation

The current Airport Zoning Ordinance lacks one critical requirement from [LGC Sec. 241.012](#) (Airport Compatible Land Use Zoning Regulations) and [241.013](#) (Extraterritorial Zoning in Political Subdivision with Population of More than 45,000). These two sections state the following:

[LGC Sec. 241.012](#): *"The airport compatible land use zoning regulations must include a statement that the airport fulfills an essential community purpose."*

[LGC Sec. 241.013](#): *"The airport hazard area zoning regulations or airport compatible land use zoning regulations must include a statement that the airport fulfills an essential community purpose."*

Recommendation

The statement should be added to Section 11-11-2 that reads, "The Midland International Airport (MAF) and Midland Air Park (MDD) both fulfill an essential community purpose and the regulations contained herein enable and protect both facilities to serve Midland's transportation and economic needs."

53) Airport Zoning Commission

Diagnostic Observation

The Airport Zoning Commission (AZC) is critical for the adoption of airport zoning regulations. Title II (Commissions and Boards), Chapter 1 (Planning and Zoning Commission) of the Code of Ordinances (Sec. [2-1-4-\(J\)](#)) establishes the Planning and Zoning Commission (P&Z) as the Airport Zoning Commission. [LGC 241.016](#) states that a city "must appoint an airport zoning commission," which Midland has done. Furthermore, [LGC 241.017](#) states, "The governing body of a political subdivision may not hold a public hearing or take other action concerning an airport zoning regulation until it receives the final report of the airport zoning commission." Thus the role of the AZC cannot be overstated since the City Council cannot act on airport regulations authorized under LGC 241 until the AZC makes a preliminary report and holds public hearings on the report before submitting a final report to the Council for action.

Recommendation

Within the text of Chapter 11 (Title XI), the role of the P&Z/AZC is understated. The definition section does define the Airport Zoning Commission as the Planning and Zoning Commission. However, a reference to Sec. [2-1-4-\(J\)](#) needs to be added, which will help to identify to readers that the P&Z is already established as the AZC in Title II (Commissions and Boards), Chapter 1 (Planning and Zoning Commission) of the Code of Ordinances.

54) Airport Board of Adjustment and Zoning Board of Adjustment

Diagnostic Observation

Airport zoning regulations (adopted pursuant to LGC 241) must provide for an Airport Board of Adjustment (ABoA). Under the current Airport Zoning Ordinance ([11-11-12](#)), the Zoning Board of Adjustment (ZBoA) is designated as the Airport Board of Adjustment (ABoA). This is allowed under [LGC 241.032](#), which establishes that a city may either use the existing Zoning Board of Adjustment (ZBoA) as the ABoA or it may establish an independent ABoA. The general rationale behind an independent ABoA is that a city may appoint aviation-related individuals with greater knowledge of the effects of airport regulations. Notably, [LGC 241.032](#) specifically states that if a ZBoA is not designated within the Airport Zoning Ordinance as the ABoA or if a ZBoA does not exist, then an ABoA must be appointed.

Recommendation

For simplicity and efficient use of City volunteers, it is recommended that the ZBoA continue to serve as the ABoA. The use of the ABoA will generally be sporadic and infrequent; therefore, to avoid the risk of having a committee or group that doesn't regularly meet (which may lead to membership problems), the ZBoA should serve this role.